

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RODOLFO MARTINEZ,

Plaintiff,

v.

SHERMAN,

Defendant.

Case No. 1:21-cv-01319-BAM (PC)

ORDER DENYING PLAINTIFF’S MOTION TO  
CONDUCT LIMITED DISCOVERY AS  
PREMATURE

(ECF No. 12)

Plaintiff Rodolfo Martinez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. Plaintiff’s first amended complaint, filed October 18, 2021, has not yet been screened. (ECF No. 10.)

Currently before the Court is Plaintiff’s Ex Parte Application to Conduct Limited Discovery, filed October 18, 2021. (ECF No. 12.) Plaintiff requests that the Court authorize him to conduct limited discovery only for the purpose of identifying Doe Defendants and where they may be served. (*Id.*)

Plaintiff’s motion for discovery is premature and is denied without prejudice. The Court has not screened Plaintiff’s first amended complaint to determine whether it is subject to dismissal or whether the action should proceed to discovery on Plaintiff’s claims. 28 U.S.C. § 1915(e)(2)(B)(ii) (“Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or

1 appeal . . . fails to state a claim upon which relief may be granted.”) The first amended complaint  
2 has not been ordered served, no defendants have appeared, and discovery has not been opened.  
3 Plaintiff’s first amended complaint will be screened in due course, and if it is found to state any  
4 cognizable claims against any defendants, Plaintiff will have the opportunity to provide the Court  
5 with further information as to the identities and locations of any doe defendants.

6 Accordingly, Plaintiff’s ex parte application to conduct limited discovery, (ECF No. 12),  
7 is HEREBY DENIED, without prejudice, as premature.

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9 IT IS SO ORDERED.

10 Dated: November 1, 2021

/s/ Barbara A. McAuliffe  
11 UNITED STATES MAGISTRATE JUDGE  
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